



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

Date: March 19, 2010

Release Number: 201025083

Release Date: 6/25/10

LEGEND

ORG = Organization name

XX = Date Address = address

UIL Code: 501.03-00

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

(Phone)

(Fax)

ORG

ADDRESS

LAST DATE TO FILE A PETITION IN TAX COURT:
June 17, 20XX

CERTIFIED MAIL – RETURN RECEIPT

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated October 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. The artists who sell their art works in your art gallery directly benefit from the exhibition and sale of their works, with the result that a major activity of yours is serving the private interests of those artists whose works are displayed for sale.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file tax returns on Forms 1120 and 990-PF. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations

Enclosures:
Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service

TEGE:EO Division

10 Causeway Street, Room 581

Boston, MA 02222-1082

January 20, 2009

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Renee B. Wells
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer	Tax Identification Number		Year/Period ended
ORG			20XX12

ISSUE:

Whether ORG is operating exclusively for exempt purposes within the meaning of IRC Section 501(c)(3).

FACTS:

The ORG, (ORG) is a private foundation which holds exempt status under Section 501(c)(3) of the Internal Revenue Code. President and Treasurer are president and treasurer of ORG, respectively. The organization's purpose is to provide financial support to charities and individuals in need. Financial support of ORG is derived from private donations and investment income.

A recent examination of the Form 990-PF filed by ORG for the period ended December 31, 20XX disclosed that ORG owns and operates an art gallery called CO-1 (CO-1). DIR-1 is the director of CO-1, and the of PRESIDENT and TREASURER. The gallery is open to the general public. Art works of local artists are displayed and sold at the gallery, with the artists retaining commissions of fifty percent of each sale.

LAW

Section 501(a) provides that organizations described in section 501(c) shall be exempt from taxation. Section 501(c)(3) includes "Corporations *** organized and operated exclusively for educational, *** purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual ***." Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to be classified as an exempt organization under Section 501(c)(3), the organization must be both organized and operated exclusively for one or more exempt purposes.

In Revenue Ruling 76-152, 1976-1 C.B. 151, a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under Section 501(c)(3) of the Internal Revenue Code.

As its sole activity, the organization selects modern art works of local artists for exhibit at its art gallery and for possible sale. If selected, the artist's work is displayed on a consignment basis with the artist setting the selling price. The artists have no control over the organization or its selection process. The organization retains a ten percent commission on sales. The commissions are substantially less than customary commercial charges and are not sufficient to recover the cost of operating the gallery. The organization attempts to make up operating deficits by soliciting contributions from the general public.

Section 501(c)(3) provides for the exemption from Federal income tax of organizations organized and operated exclusively for educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 66-178, 1966-1 C. B. 138, holds that an organization that fosters and develops the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are gratuitously displayed may qualify for exemption under Section 501(c)(3) of the Code. The organization does not sell or offer the displayed works for sale.

Revenue Ruling 71-395, 1971-2 C. B. 228, on the other hand, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their art works does not qualify under Section 501(c)(3) of the Code.

As is the case in Revenue Ruling 71-395, the artists in the subject case are being directly benefited by the exhibition and sale of their works, with the result that a major activity of the organization is serving the private interests of those artists whose works are displayed for sale.

Accordingly, the organization is not operated exclusively for educational purposes and thus does not qualify for exemption from Federal income tax under Section 501(c)(3) of the Code.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended	
ORG		20XX12	

LEGEND

ORG = organization name XX = Date President = president Treasurer = treasurer DIR-1 = 1st Director CO-1 = 1st CO

TAXPAYER'S POSITION:

During a telephone discussion with TREASURER, she expressed that ORG varies from the organization described in Revenue Ruling 76-152, in that they pay the artists only fifty percent commission on sales, in lieu of the ninety percent commission paid by that organization. After further discussion, TREASURER conceded that the difference in percentage of commission in comparison is of little or no consequence, when considering the sales activity. TREASURER also stated that the ORG is in the process of restructuring, so that the CO-1 will begin operating as a separate entity.

CONCLUSION:

As this is an examination of the Form 990-PF of _____ for the period ended December 31, 20XX, we propose a revocation of exempt status under Section 501(c)(3) of the Internal Revenue Code effective January 1, 20XX, the examination year. The organization would be required to file Forms 1120 for periods ended December 31, 20XX, 20XX, 20XX, and 20XX. the years in which the commercial sales activity occurred, The fact that the organization is restructuring does not change what has already occurred in previous years.